HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.299 of 2005

1. Mithlesh Gandhi
   S/o Sri Raja Ram
   R/o Mohalla Pakka Kot, Kashipur
   P.S. Kashipur
   District U. S. Nagar
2. Sukhvant Singh
   S/o Sri Bachan Singh
   R/o village Barkheri
   P.S. Kashipur
   District U. S. Nagar ....Applicants

Versus

1. State of Uttaranchal
2. Pankaj Sheel, Security Officer
   Indian Glycols Ltd. Bazpur Road
   Kashipur, District U. S. Nagar ...Respondents

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Jagdish Prasad & Smt. Pushpa Joshi learned counsel for the applicants and Sri S. K. Posti learned counsel for the respondent No.2.

2. This petition has been filed for quashing the chargesheet dated 30.1.2002 in case crime No.1290/2002 under section 379, 411 I.P.C. P.S. Kashipur, District U. S. Nagar in criminal case No.369/2003 pending before the Judicial Magistrate, Kashipur, District U. S. Nagar.

3. Brief facts of the case are that an FIR was lodged at police station Kashipur by the respondent No.2-Pankaj Sheel on 11.10.2002. It has been alleged that Indian Glycols Ltd. is an industry, which is manufacturing various chemicals. The industry is selling these chemicals to their customers throughout the country. When the complainant received several complaints from the customers about the less quantity received by them,

the Company tried to detect the persons, who are behind the theft. It was revealed that on 10.10.2002 at about 10PM that the applicants were drawing the chemicals from the tanker and were collecting the same in their godown, which was on the road side in the Kashipur. The complainant informed the police in this regard. Thereafter, the police conducted the raid on the godown of the applicants and recovered chemicals from the said godown. The police investigated the matter and submitted the chargesheet. Feeling aggrieved by this, the applicants have come up before this Court.

4. The learned counsel for the applicants contended that the FIR does not contain the name of the applicants-accused. The FIR does not contain the date, time, & place from where the chemical was stolen and what type of chemical was drawn from the tankers by the applicants. The learned counsel for the applicants further contended that the I.O. has recorded the statements of the witnesses after a lapse of long period. The learned counsel for the applicants contended that the recovery was made from the applicants' godown and it cannot be said that the said chemical belonged to the complainant's company. The recovery memo reveals that the recovered article cannot be identified that it pertains to the complainant's company. The learned counsel for the applicants contended that the said chemical was purchased by the applicants from a firm at Delhi and the receipts thereof have been filed before the I.O. It was further contended that the recovered chemical do not belong to the complainant's company. The learned counsel for the respondent No.2 refuted the contention and contended that the recovered chemical was purchased by them from Chemical Syndicate, Delhi.

The police investigated the matter and went to Delhi to ascertain the genuineness of the transaction. It was found that the recovered chemical was not purchased from Delhi and all the documents relating to the transaction are fabricated and forged one. The learned counsel for the respondent No.2 contended that Tanuj Gagrana, who is the proprietor of the Chemical Syndicate Ltd., has stated in his evidence that he sold the said chemical to the applicants-accused, but Vijay has not stated in favour of the accused-applicants. Vijay has stated that he cautioned his brother Tanuj not to issue fabricated receipts. The prosecution has also recorded the statement of Mahendra Singh-owner of Truck No. UP03 1868, by which the said chemical was carried from Delhi to Kashipur. He stated before the I.O. that his Munshi has issued a forge receipt to Mithilesh Gandhi-applicant. The I.O. recorded the statement of Navtej Singh, who was the driver of the said truck. He stated that he never went anywhere on the date in question alongwith his truck. He never brought the chemical to Kashipur from Delhi.

5. The certificates of Sales Tax Department were obtained in order to ascertain that the chemical was carried from Delhi to Kashipur or not. The certificate of U.P. Border clearly indicates that it was not taken as indicated in the letter. Delhi Sales Tax Department has clearly indicated that the said firm has not filed the returns for the year when the transaction has been made in the present prosecution. The learned counsel for the respondent No.2 contended that the said transaction is forged one and as such the accused persons are liable to be convicted.

6. I have gone through the contentions of the parties. The learned counsel for the applicants contended that the name of the witnesses, who were the eye-witnesses of the incident, have not been mentioned in the FIR. It was further contented that the FIR does not contain the date, time, & place from where the chemical was stolen and what type of chemical the applicants drew from the tankers. It was also contended that the prosecution has recorded the statements of witnesses after a lapse of long period and it cannot be said that the said chemical was belonged to the complainant's company. The aforesaid questions are related to the evaluation of evidence. At this stage, this Court cannot adjudicate upon and give finding on the disputed facts. These disputed facts can only be decided during the trial.

7. So far as the factum of purchasing of chemical from Delhi is concerned, the prosecution has stated that the transaction papers are fabricated. The prosecution has filed certain papers before the court below, which clearly reveals that the transaction is forged one. Certain affidavits have been filed by the parties, which shows that the transactions were made. However, the affidavits, which have been filed before the court below, cannot be considered at this stage. This court cannot decide as to whether the recovered chemical was purchased from Delhi or not. As a matter of fact, this is the main defence of the accused-applicants, which can be taken during the trial. It is prima facie established from the evidence on record that there is sufficient evidence to proceed against the applicants.

8. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable

or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

9. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the compliant are likely to be established or not.

10. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

11. The learned counsel for the applicants contended that there is malice between the parties. The FIR was lodged by the respondent No.2 to harm the reputation of the applicant No.1, who happened to be the member of Pollution Control Board, U.P. The applicant No.2 is a journalist. The learned counsel for the applicants contended that the applicant No.1-Mithlesh Kumar Gandhi has taken a stand in the Pollution Board against the company of the complainant. As such, the applicants have been falsely implicated in this case. The

applicant No.2 has published certain articles against the respondent No.2 and as such the respondent No.2 was prejudiced. The learned counsel for the respondent No.2 refuted the contention and contended that however the applicant No.1 is the member of Pollution Control Board and the applicant No.2 is a journalist, who has published some articles against the respondent No.2, but it does not carry any weight as there is prima facie case against the applicants. The matter was investigated by an independent agency and as such there was no malice. The evidence which was collected by the I.O. during investigation is sufficient to proceed against the applicants. The evidence referred by the learned counsel for the respondent No.2 during his argument was available on record which leads the inference that the said chemical was drawn from the tankers of the respondent No.2. The documents and the oral evidence as referred by the counsel of respondent No.2 further leads to take the inference that the applicants did not purchase it from Delhi firm and it is a sham transaction.

12. In view of the aforesaid decisions, the petition is devoid of merit. Therefore, the petition is dismissed.

13. In case the bail applications of the applicants are moved before the court below, the same shall be disposed of expeditiously without waste of time.

(J. C. S. Rawat, J.)

Dated 18.8.2005

LSR